

## REMARKS

Claims 1-19 are pending. The amendments are fully supported by the original disclosure and, thus, no new matter is added by their entry. Support for amendments to claims 5 and 11 is found at page 5, lines 19-21, and page 7, lines 3-4, respectively, of the specification.

Applicants elect with traverse Group IV (i.e., claims 5-7, 10 and 14-19) and the species *Saccharomyces cerevisiae* for examination on the merits. Elected claims 5-7, 10 and 14-19 read on the elected species. Applicants reserve the right to prosecute non-elected subject matter in a further patent application.

Notwithstanding the above elections, reconsideration of the restriction requirement is requested because examination of all pending claims would not constitute a serious burden. Although the inventions identified by the Examiner are separately patentable, both the need for compact prosecution and the public interest would be served by examination of all claims in a single application. In particular, claim 9 of Group VII should also be examined in this application with the claims of Group IV.

More specifically, the claims of the elected invention are directed to an isolated nucleic acid which comprises one or more mutations compared to the wild-type gene (SEQ ID NO: 28 comprises a “G” at position 625 whereas the wild-type SEQ ID NO: 25 comprises an “A” at that position, see Table 3B at page 11 of the specification). As a consequence, the mutated nucleic acid encodes a mutant HXT3 protein with improved fructose uptake capability as compared to the wild-type HXT3 protein.

In the alternative, it is noted that elected claim 5 is a generic claim and that examination should proceed under the provisions of M.P.E.P. § 809. Mutated SEQ ID NOS: 28 and 29 are functionally and structurally related to the individual species of the nucleic acid according to claim 5. SEQ ID NO: 28 has the mutation mentioned above. SEQ ID NO: 29 has this mutation as well as additional mutations from Table 3B. Therefore, the claims of Groups IV and V should be examined in the same application.

Finally, in accordance with the Commissioner’s Notice of March 26, 1996 (1184 OG 86) implementing the Federal Circuit’s decisions of *In re Ochiai*, 37 USPQ2d 1127

(1995) and *In re Brouwer*, 37 USPQ2d 1663 (1996), Applicants request rejoinder of nonelected method claims upon an indication that an elected product claim is allowable.

Applicants earnestly solicit an early and favorable examination on the merits. The Examiner is invited to contact the undersigned if additional information is required.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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